RAJYA SABHA

Thursday, 24th August 1995 / 2nd Bhadra, 1917 (Saka)

The House met at eleven of the clock. Mr. Chairman *in the Chair*

ORAL ANSWERS TO QUESTION

न्यायालय द्वारा दोषसिद्ध पाये गये सरकारी कर्मचारियों की बहाली

*301. **श्री दिग्विजय सिंह:†**
श्री सत्य प्रकाश मालवीय:

क्या प्रधान मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या किसी न्यायालय के निर्णय के विरूद्ध या किसी न्यायालय द्वारा दोषसिद्ध पाये गये सरकारी कर्मचारियों की बहाली के संबंध में कोई प्रावधान या नियम है;

(ख) यदि हां, तो तत्संबंधी ब्यौरा क्या है; और

(ग) यदि नहीं, तो भारतीय प्रशासनिक सेवा, भारतीय पुलिस सेवा या ऐसी अन्य सेवाओं में ऐसे सरकारी कर्मचारियों की बहाली के विरूद्ध केन्द्रीय सरकार क्या कार्रवाई करती है?

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIENVANCES AND PENSIONS (SMT. MARGARET ALVA): (a) and (b) A statement is laid on the Table of the House.

(c) Does not arise.

Statement

(a) and (b) Reinstatement denotes resumption of office by a government servant who has been dismissed/ removed/compulsorily retired or is under suspension and may be possible in the following types of cases:—

i) If he had been placed under suspension pending criminal proceedings against him and is acquitted by the court of law and it is decided that no departmental proceedings need be initiated on the basis of the facts disclosed during investigation or on the basis of facts which led to the launching of prosecution in a court of law.

ii) If the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a court of law of Administrative Tribunal or appellate/revising/ reviewing authority.

iii) Under the Central Civil Service (lassification, Control and Appeal) Rules, 1965, a Government servant shall be deemed to have been placed under suspension with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not dismissed or removed or compulsorily retired consequent to such conviction. These rules also provide that the disciplinary authority may impose any penalty as it deems fit on a Government servant on the grounds of conduct which has led to his conviction on a criminal charge. However, conviction on a criminal charge does not automactically entail imposition of a penalty. The disciplinary authority must persue the judgement of the court and consider whether his conduct, which has led to his conviction, was such as warrants imposition of a penalty and if so, what that penalty should be. If the penalty imposed by the disciplinary authority is other than dismissal, removal or compulsory retirement or no penalty is imposed considering the facts and circumstances of the case, the Government servant will be reinstated in service.

श्री दिग्विजय सिंह: सभापति जी, माननीया मंत्री जी ने जो जवाब दिया है, उसको देखने से ऐसा लगता है

†यह प्रश्न सभा में श्री दिग्विजय सिंह द्वारा पूछा गया।

कि राज्य सरकारों ने अपनी-अपनी तरह से या तो इस नियम का उल्लंघन किया या केन्द्र सरकार इस पूरी घटना के दौरान उदासीन रही है। कई ऐसे राज्य हैं जहां — कानून की तरफ से चाहे हाई कोर्ट हो या सुप्रीम कोर्ट की तरफ से भी सज़ा सुनाई गई, दोषी पाया गया, यह अपराध सिर्फ पैसे या दूसरी चीज़ों का नहीं है, हत्या तक के अपराध में लोगों को सज़ा सुनाई गई है, वैसे लोगों को राज्य सरकारों ने बहाल किया है। हमारा माननीय मंत्री जी से खास कर के प्रधानमंत्री जी से निवेदन है कि एक बड़ी अजीब स्थिति है। यह सारे पदाधिकारी भारत सरकार के पदाधिकारी हैं। कॉडर के नाम पर उनको राज्य सरकारों के द्वारा चलाया जा रहा है। राज्य सरकार ने मनमाने ढंग से जिस व्यक्ति पर जितना भी बड़ा अपराध हो उसको नज़र-अंदाज़ करके उसकी नियुक्ति की है। मैं माननीया मंत्री महोदया से और प्रधानमंत्री जी से भी क्योंकि यह उनका विभाग है यह कहना चाहता हूं कि यह बड़ा परेशानी का विषय है पूरे देश में। मंत्री या मुख्य मंत्री जिस व्यक्ति को चाहता है उसकी सज़ा कुछ भी हो, कानून के सामने हर इन्सान बराबर है, लेकिन पदाधिकारी चापलूसी और दूसरे तरीकों से मुख्य मंत्री के ऊपर और भारत सरकार के ऊपर..

MR. CHAIRMAN: Please ask the question.

श्री दिग्विजय सिंह: मैं सवाल ही पूछ रहा हूं। यह दबाव डाल कर अपने आप को रिइंस्टेट करवा लेते हैं। मंत्री जी राज्यव्यापी यह ब्यौरा दें कि किन किन मुख्यमंत्रियों ने यह काम किये है और भारत सरकार का रवैया इसमें क्या रहा है?

SHRIMATI MARGARET ALVA: Sir, I would like to clarify that a conviction by itself does not make an officer liable for dismissal or being removed from service. The guidelines have been set out very clearly by the Constitution Bench itself, in the case of Tulsi Ram Patel, in which the Supreme Court has laid down very strict guidelines on what needs to be done, even when they are convicted in a court of law, and I would just quote one part of that judgment. It says: "A conviction by itself need not lead to punishment. The disciplinary authority must, however, bear in mind that the conviction on a ciminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these penalties is required to be imposed, he has to pass the requisite order and even in that case, the officer is given an opportunity to appeal against it and to say that the punishment given is not in keeping either with the facts or with the circumstances of the case."

It is only then that a final order can be passed and even that order, Sir, is justiciable. The Officer can appeal to the court, and we have many cases where officers have been reinstated on the directions either of CAT or of the courts themselves that the punishment given is not serious enough to entail the punishment given.

श्री दिग्विजय सिंह: मंत्री जी, मैंने जो बुनियादी सवाल पूछा है उसका तो जवाब आपने दिया ही नहीं। मैं यह कब कहता हूं। जब सारे कोर्ट्स खत्म हो जाते हैं उसके बाद भी पदाधिकारियों की बहाली हुई है, इसके बारे में तो जवाब दिया ही नहीं। आपने ला प्वाइंट क्या है वह बताया। वह तो मैं भी जानता हूं किसी को कोई सजा सुनायी जाए तो वह दूसरे कोर्ट में जाकर अपनी बात रख सकता है। लेकिन जब सारे कोर्ट्स खत्म हो गए, आखिरी सजा मिली कि नहीं यह दोषी है, उसके बाद भी उनको नौकरी मिले तो इसका राज्यव्यापी ब्योरा दीजिए, नहीं तो मैं देने को तैयार हूं। मेरे पास है। मैं इसका जवाब चाहता हूं।

SHRIMATI MARGARET ALVA: This is what I am saying, that even if a Supreme Court conviction might be there, the Supreme Court itself has clarified that it is the disciplinary authority that has the final right to impose the penalty which the authority thinks is in keeping with the causes of the action taken by the courts. Sir, even after a conviction by the Supreme Court—it may be an imprisonment for a month or two, or it may be for any period above 48 hours, the officer is kept under suspension, but the dismissal and the other punishments of tfhe severe nature are taken by the disciplinary authority, depending on the circumstances, and even then the officer has a right of appeal

either to the disciplinary authority or to the courts.

SHRI DIGVIJAY SINGH: Sir, I need your protection against this. Sir, I have cases.

हरियाणा में है। सुप्रीम कोर्ट ने एक फैसला दिया एक अफसर के खिलाफ। उस जजमेंट के बारे में कहीं कोई रिव्यू या अपील नहीं हो सकती है, न उस पदाधिकारी ने कहीं की है, फिर भी किया गया। मैं नाम नहीं लेना चाहता था सिद्धांत के रूप में आपसे जानना चाहता था। अब मैं नाम के साथ आपको केसेज बता रहा हूं। हरियाणा में कोर्ट के निर्णय के विरुद्ध श्री डाबर को रेलवे पुलिस अधीक्षक बनाया गया, आई० पी० एस० आफिसर है। हरियाणा में ही एक दूसरा भी हुआ है। आपके पास ब्यौरा है। आप उस ब्यौरे को क्यों नहीं सदन में रखना चाहती हो। मैं यह सवाल पूछ रहा हूं आपसे। सुप्रीम कोर्ट के जजमेंट के बाद कौन सा जजमेंट बचा है। राज्य सरकार ने किस अधिकार से उसको बहाल किया?

श्री रामजीलाल: महोदय...(**व्यवधान**)

श्री सत्य प्रकाश मालवीय: आप क्यों जवाब दे रहे हैं। आपको जवाब देने का अधिकार नहीं है। मंत्रीजी कंपीटेंट है। बहुत योग्य मंत्री है ...(**व्यवधान**)

श्री दिग्विजय सिंह: इसलिए, माननीय प्रधान मंत्री जी एक नीतिगत बात आप कहिए। मैं किसी राज्य सरकार का नाम नहीं लेना चाहता हूं। मैं नीनतिगत जानना चाहता हूं कि अगर सुप्रीम कोर्ट के फैसले के बाद भी यदि कोई पदाधिकारी दोषी पाया जाए तो क्या वैसी हालत में भारत की सरकार या राज्य सरकार उसको फिर से बहाल कर सकती है..(**व्यवधान**) मेरिट कहां है। मैं यह पूछना चाहता हूं कि इस पदाधिकारी का कैसे हुआ?

प्रधान मंत्री (श्री पी० वी० नरसिंह राव): आप कानून की बात जानना चाहते हैं तो अभी उन्होंने वह पढ़ा है। सुप्रीम कोर्ट ने खुद कहा है कि हमारी सजा देने के बाद भी वहां फिर एडीमिनिस्ट्रेटिव्ली जो कार्यवाही होनी चाहिए वह होनी चाहिए और उसके बगैर यह नहीं कहा जा सकता कि आटोमैटिकली हमने कह दिया तो बस उसको हटाना ही चाहिए। यह तो सुप्रीम कोर्ट बात कहता है। लेकिन मैं समझता हूं कि आप जो सवाल उठाना चाहते हैं वह कानून का नहीं वह औचित्य का है और एडमिनिस्ट्रेटिव्ली क्या करना चाहिए। मेरे पास जो काम करता है अगर उसको सुप्रीम कोर्ट कंडेम करता है और चार महीने के लिए जेल भेजता है तो मुझे सोचना चाहिए कि कानून में रख भी सकता हूं तो मुझे रखना है कि नहीं रखना है। तो फिर वह डिस्क्रीशन की बात हो जाती है, डिफरेंट सरकमस्टांसेज की बात आ जाती है। तो जिस केस के बारे में आप जानना चाहते हैं वह तफसील आपको दी जा सकती है। लेकिन उसमें तो अब जाने में वक्त लगेगा। तो मैं यह कह रहा हूं कि प्रिंसिपल यही है। सुप्रीम कोर्ट ने खुद कहा है कि हमारी सजा देने के बावजूद भी हम नहीं चाहते या हम नहीं समझते कि आटोमैटिकली सुप्रीम कोर्ट ने यह सजा दे दी और वह बरतरफ हो गया। ऐसा नहीं हो सकता है। जो एडमिनिस्ट्रेटिव अथारिटी हैं उनको फिर से सोचना है और सोचते वक्त हमने जो कहा है, हमारा जो फैसला है उसके क्या कारण हो सकते हैं, क्या ग्राउंड्स हो सकते हैं, उनको अपने ध्यान में रखना है। यह बात है। वहां क्या हुआ है, मैं तो जानता नहीं हूं। लेकिन आप चाहते हैं तो पूरे फैक्ट्स भी हम मंगाकर आपको दे सकते हैं।

SHRI SATYA PRAKASH MALAVIYA: Sir, I would like to draw the attention of the Prime Minister to part (iii) of the statement laid on the Table of the House by the hon. Minister, Mrs. Margaret Alva and I quote:

> "Under the Central Civil Service (Classification, Control and Appeal) Rules, 1965, a Government servant shall be deemed to have been placed under suspension with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not dismissed or removed or compulsorily retired consequent to such conviction."

Now this particular case is about an IPS officer of the Gujarat cadre in Haryana, who was convicted for two months by the Supreme Court on a criminal charge. He had to undergo imprisonment inside the jail for two months. The rule, which has been laid on the Table of the house by the hon. Minister, says that if an officer is sentenced to a term of imprisonment exceeding forty-eight hours, then automatically he stands suspended. There was an IPS officer in Haryana of the

Gujarat cadre. He was convicted in a case of criminal charge by the Supreme Court and thereafter he had to undergo imprisonment inside the jail. When he came out of the jail he was posted as an officer of police in the CRP. To this extent, the action by the Haryana Government is against the rule, which has been quoted by the hon. Minister. He should have been suspended. He was not suspended. The question is not about the departmental proceedings. The only question is that since he was convicted by the Supreme Court for more than forty-eight hours, though the departmental proceedings should have continued, he should not have been posted as Superintendent of Police in the CRP. This has been done with a political motive to harass the political opponents of Bhajan Lal in Haryana.

श्रीमती सुषमा स्वराज: ऐसे लोगों को री-इन्स्टेट नहीं करेंगे तो गोली कैसे चलवायेंगे? कल गोलियां चली हैं। ऐसे पुलिस आफिसर तो वहां पर गोलियां चलाते हैं।

SHRIMATI MARGARET ALVA: Sir, may I clarify just two things? (*Interruptions*)...

MR. CHAIRMAN: The Minister is answering, please.

SHRIMATI MARGARET ALVA: Sir, I would like to point out that the conviction in this case was on a matter of contempt of court. (*Interruptions*)... One minute. (*Interruptions*)...

SHRI SATYA PRAKASH MALAVIYA: That is a criminal charge. The conviction is on a contempt of court and the Supreme Court has said that it is a criminal charge. The Supreme Court has not ordered it. The Supreme Court has not reviewed it. (*Interruptions*)...

SHRIMATI MARGARET ALVA: Please let me finish. To begin with, it was a case of contempt of court and there was a sentence. His deemed suspension is because on being sent to jail automatically an officer is kept under suspension. Sir, I must say that the hon. Member, I respectfully submit, has not read the whole answer which has been given. He has read only the sentence which supports his argument. But I have also stated:

> "These rules also provide that the disciplinary authority may impose any penalty as it deems fit on a Government servant on the grounds of conduct which has led to his conviction on a criminal charge. However, conviction on a criminal charge does not automatically entail imposition of a penalty."

Now I am quoting from the Supreme Court judgment:

> "The disciplinary authority must pursue the judgment of the Court and consider whether his conduct, which has led to his conviction, was such as warrants imposition of a penalty and, if so, what that penalty should be. This discretion has been given...."

(*Interruptions*)

SHRI VIREN J. SHAH: At that time, he must be under suspension. When the disciplinary authority was looking into it, was he under suspension or not?

SHRIMATI MARGARET ALVA: It does not say so.

> "If the penalty imposed by the disciplinary authority is other than dismissal, removal or compulsory retirement and no penalty is imposed, the Government servant will be reinstated in service."

This is what we are saying that the discretion has been left to the disciplinary authority, which is the State Government. But I must add that the final authority for the All India Services is the Cadre Controlling Authority and in this case it is the Home Ministry. It is up to the Home Ministry, taking into account the circumstances of the case, if they feel so, either on an appeal of the officer or on a recommendation of the State Government or *suo motu*, to take a

final decision on what should be done as far as the penalty is concerned.

SHRI SATISH AGARWAL: Mr. Chairman, one question.

MR CHAIRMAN: Yes.

SHRI SATISH AGARWAL: Mr. Chairman, Sir, the hon. Minister is taking cover under the Supreme Court judgment which relates to the Tulsiram Patel case. So far as my memory goes, this Tulsiram Patel case was not on this point. Whatever portion the hon. Minister has quoted from the Tulsiram Patel's case, it was a decision of the Constitutional Bench. I had also referred to that case in many cases argued in the High Court. That is only *obiter dicta*. It is not a binding portion of the judgment so far as this portion is concerned. The Supreme Court in this case was considering the scope of article 310 of the Constitution, pleasure of the President. This was just *obiter dicta*. *Obiter dicta* is not binding upon the Government. This is number one. Secondly, I am on a wider spectrum. I would like to tell the Prime Minister that in this House we are discussing the nexus between the criminals.

politicians and the bureaucrates. Has the time not come to amend the rules in view of the many facts coming out of the Vohra Committee Report and also from the discussion in both the Houses of Parliament and in the case of a man who has been convicted by the Supreme Court and that too, for the contempt of the Supreme Court? Will the Government amend the rules so as to wipe out and not to give patronage to such criminals who have been found guilty by the Supreme Court or the High Court? I hope the Government will not take cover under the existing rules. In view of the discussion regarding the nexus between the criminals, politicians and the bureaucrats in both the Houses of Parliament will the Government amend the rules to debar such established criminals who have been found guilty by the highest court of the land, from getting any political patronage from the Government ?

THE PRIME MINISTER (SHRI P.V. NARASIMHA RAO): Sir, this is far outside the question. While answering a question to a supplementary like that it is impossible to answer because under what circumstances a particular decision has to be taken will depend upon the circumstances of the case. If it is *obiter dicta* which is not binding, I would like to know what binding is. We take the comments of the Supreme Court as binding, as respected comments, which we act upon. If it is contended, as the hon. Member said that it is only *obiter dicta* and it need not be followed, he should tell me what has to be followed. We have to go into the details of that case. What was the point at issue, what was the decision and what was *obiter dicta*, we would make all those distinctions later. But the point is we are answering a question here. They seem to be having some case in view. We can get the facts of the case and give those to them. Generally what the position is that obtains today and what the rule position is that obtains today, that is what my colleague has said. I do not see how we can answer this question except with particular reference to what the questioner asks. That is all. (*Interruptions*)

SHRI VIREN J. SHAH: Sir, will the Home Ministry....

SHRI SOMAPPA R. BOMMAI: Sir, the Prime Minister has said in the beginning that it is a question of ethics and the court may technically say something. But, an administrator at the highest level must follow some code of conduct. That is what the Prime Minister said. In pursuance of that, will the Government think of any code of rule or guideline in such cases?

SHRI P.V. NARASIMHA RAO: Sir, that is a larger question. We will attend to that larger question. what I am trying

to submit is, while answering a specific question, it is not possible for me to make a general policy decision. We are discussing that matter threadbare. There is no question of running away from the facts as you and I see them and if we don't have to run away, as we do not want to, we have to do something about it. But, they cannot specifically ask me in the course of answering a question to tell them as to what we would be doing. I have taken note of the suggestion and that suggestion is there.

श्री ईश दत्त यादव: मान्यवर सभापति जी, श्री दिग्विजय सिंह जी के मूल प्रश्न के उत्तर में प्रधानमंत्री जी ने जो उत्तर दिया है, उसी से मेरा प्रश्न उत्पन्न हो गया। प्रधानमंत्री जी ने यह कहा कि न्यायालय के निर्णय के बाद भी और किसी अधिकारी के दंडित हो जाने के बाद भी यह सरकार विचार करेगी और स्वविवेक से सरकार निर्णय लेगी कि क्या परिस्थितियां ऐसी है कि उसे पुनर्नियुक्ति दी जा सकती है। उसी से संबंधित मेरा प्रश्न है। मैं आपके माध्यम से प्रधानमंत्री जी से यह जानना चाहता हूं कि क्या इसके लिए सरकार ने कोई गाइडलाइन भी बनाई है, इस तरह का कोई मापदंड भी निर्धारित किया है कि न्यायालय से सजा पाने के बाद भी उस अधिकारी के बारे में किन-किन परिस्थितियों पर विचार किया जाएगा? दूसरा मेरा प्रश्न होगा, पार्ट "दी" इसका होगा, कि न्यायालय से जब कोई अधिकारी दंडित हो गया, उसके बाद भी विभागीय कार्यवाही उसके खिलाफ हुई और विभागीय कार्यवाही में भी वह दोषी पाया गया तो क्या इन परिस्थितियों में भी, न्यायालय से दंडित होने के बाद और विभागीय कार्यवाही में दोषी पाए जाने के बाद भी, दोनों परिस्थितियों के बाद भी उस अधिकारी की पुनर्नियुक्ति के लिए कोई केन्द्र सरकार का इस तरह का मापदंड है, इस तरह का निर्देश है और क्या किसी ऐसे अधिकारी को पुनर्नियुक्ति दी गई है, जो न्यायालय द्वारा भी दंडित हुआ हो और विभागीय कार्यवाही में भी दोषी पाया गया हो?

SHRIMATI MARGARET ALVA: Sir, we have issued detailed guidelines. The rule provision is detailed. I can hand it over to the Member. It is Rule 19(i) of the C.C.S. Rules, 1965, wherein detailed guidelines have been given. Sir, I am repeating that conviction by itself does not have to lead to dismissal. For instance, a member of the Civil services may be convicted for rash and negligent driving or he may get involved in an accident or three may be various other matters on which he is convicted. He is deemed to be under suspension the moment he is in jail for than 48 hours. The guidelines which we have issued are that it is the disciplinary authority which has to look into the Supreme Court judgments, the facts and the circumstances of the case that led to his conviction and then make up its mind as to what punishment has to be given. It is for the disciplinary authority to take the final decision. In addition to that, it is required by the Supreme Court that a notice should be given to the officer and his explanation or his views would have to be taken into view before the penalty is imposed. This is the protection provided constitutionally to the Civil servant and it is also provided under the guidelines. It is for the State Governments, therefore, to look into it. I am not politicising this. But there are so many cases—I have the whole list with me—where the officers who have been convincted or the officers who are facing charges of causing death in custoday or other such things or officers against whom criminal cases are pending, have been reinstated by State Governments and even while the trial is going on, even in criminal matters, they have been allowed to rejoin service in various States. I am not saying whether it is right or wrong. But these are the facts. It is up to the State Governments, therefore, to take the decision. They are under their disciplinary authority.

MR. CHAIRMAN: The indestructibility of the civil servant is established.

MR. CHAIRMAN: Question No. 302.

Functioning of the All India Services

*302. SHRI JAGMOHAN: Will the PRIME MINISTER be pleased to state (a) whether the functioning of the all India service-IAS and IPS-has, of late,